GOVERNMENT OF THE DISTRICT OF COLUMBIA

OFFICE OF THE CITY ADMINISTRATOR

Public Hearing on
Bill 22-130, the Paid Leave Compensation Act of 2017,
Bill 22-133, the Universal Paid Leave Compensation for Workers Amendment Act of 2017,
Bill 22-302, the Large Employer Paid-Leave Compensation Act of 2017,
Bill 22-325, the Universal Paid Leave Amendment Act of 2017, and
Bill 22-334, the Universal Paid Leave Pay Structure Amendment Act of 2017

Testimony of

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Before the
Committee of the Whole
Council of the District of Columbia
The Honorable Phil Mendelson, Chairperson

Council Chamber
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004
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Good morning, Chairman Mendelson and members of the Council. For the record, my name is Rashad Young, and I serve as the City Administrator of the District of Columbia. Joining me today at the table is Jacob Wong, an Applied Research Analyst in the Office of the City Administrator.

I am pleased to testify before you today on Bill 22-130, the Paid Leave Compensation Act of 2017; Bill 22-133, the Universal Paid Leave Compensation for Workers Amendment Act of 2017; Bill 22-302, the Large Employer Paid-Leave Compensation Act of 2017; Bill 22-325, the Universal Paid Leave Amendment Act of 2017; and Bill 22-334, the Universal Paid Leave Pay Structure Amendment Act of 2017. Each of these bills proposes to make amendments to the Universal Paid Leave Act, which was approved by the Council in December of 2016.

Overview of Universal Paid Leave Act

As you are aware, the Universal Paid Leave Act creates one of the first programs of its kind in the country. Under the Act, part-time and full-time private employees who work in the District, regardless of their place of residence, will be eligible for a paid leave benefit.

The paid leave benefit consists of 6 weeks of paid leave for the care of a family member, 8 weeks of paid leave for the birth a child or placement of a child with the employee, and 2 weeks of paid leave for the employee's own serious medical condition.

The weekly benefit that an employee will be paid under the Act is calculated as a percentage of the employee's regular wages, capped at $1,000 per week. The benefits will be funded by a 0.62% payroll tax imposed on all District employers.

It is important to note that the program will be administered by the District, not by employers. Employees will apply to the District government for the benefit, the District government will review and approve or disapprove the benefit claim, and the District government will make direct benefit payments to employees.

It is also important to note, particularly for the public, that federal government employees are not eligible for the paid leave benefit and that District employees are covered by a separate paid leave program, not by the Paid Leave Act. In addition, the paid leave program will not begin to pay benefits until July 1, 2020. This ramp-up period is necessary in order to establish policies and procedures for the implementation of the program, to develop the information technology to implement the program, to hire the employees who will be necessary to administer the program, and to collect sufficient revenue through the payroll tax to be able to pay benefits to eligible employees.

The five bills before the Council today propose to amend the current Paid Leave Act in a number of ways—such as by allowing employers to implement their own paid leave programs, rather than requiring them to participate in a District-administered program; to remove small employers from the scope of the program; to modify the tax rate imposed on employers and to impose a tax on employees in addition to employers; and to remove the medical leave benefit. Before discussing the proposed amendments to the Paid Leave Act that are before the Committee today, I would like to describe the work that the Administration has undertaken so far to implement the current law.

Implementation of the Current Law

As I mentioned earlier in my testimony, the Paid Leave Act was approved by the Council at the end of 2016. It completed the mandatory Congressional review period in April 2017, but no funding was provided to begin to implement the law until Fiscal Year 2018 (FY18), which began on October 1 of this year, just last week. Some of the other key dates associated with the legislation are noted on the current slide. The most important dates are July 1, 2019, which is the date on which the payroll tax is scheduled to begin, and July 1, 2020, which is the date on which the benefits program itself is expected to begin. That is, July 1, 2020, is the date on which employees will become eligible to apply for paid leave benefits.

It is important to note, though, that these implementation dates were based on the legislation as enacted. To the extent that the legislation is amended, these dates will almost certainly change. Moreover, the current uncertainty regarding the final scope and structure of the program is itself delaying our implementation of the law. A number of steps that we need to take, such as drafting regulations and beginning the process of developing the required information technology systems, rely on having clear, firm program requirements. Until the Council adopts amendments to the existing law, or sets aside the current legislative proposals, these steps cannot fully move forward. The current uncertainty, therefore, threatens our ability to implement the paid leave program on the statutory timelines.

Even with this lack of clarity, however, the Administration has been moving forward aggressively to create a work plan to implement the current law. Months before any funding was available to implement the Paid Leave Act, the Administration established an internal working group consisting of representatives from the Office of the City Administrator, Office of the Deputy Mayor for Greater Economic Opportunity, Department of Employment Services, Office of Human Rights, Office of the Chief Technology Officer, Department of General Services, Office of the Chief Financial Officer, Department of Human Resources, and Office of Contracting and Procurement.

The working group has met six times over the past several months. During this time period, members of the working group also held dozens of internal calls; had discussions with each state that operates a paid leave program, with separate calls related to both programmatic issues and information technology issues; met with representatives of advocacy groups; and also met a number of times with federal partners with experience in information technology development and paid leave programs.

The overarching goal of the working group is to create a detailed road map for implementing the Paid Leave Act, with a specific focus on the following areas:

- Administrative implementation of the program, including regulations, tax collection, claims submission, claims review, and benefit payment;
- Developing a more detailed budget for implementing the program, including both operating and capital costs;
- Developing a high-level information technology plan for the systems necessary to collect the payroll tax, review and verify claims, and pay benefits;
- Developing a plan for program staffing, including claims specialists, customer service representatives, medical and insurance experts, administrative law judges, and information technology specialists, along with the timing for these hires;
- Calculating space needs, including estimates for the costs and timing of space buildout; and
- Marketing and outreach for the paid leave program.

Staffing

One of the first major issues that the working group addressed was staffing needs for the paid leave program, including the number of employees needed to implement the program at full implementation and the number of staff that are necessary to ramp up to full implementation. As part of this process, the working group first determined which entity would be in the best position to administer the program. It reviewed both existing District agencies, the creation of a new agency, and the use of an outside entity. Based on a variety of factors, including costs, capacity, experience in other jurisdictions, and synergy with existing programs, we have determined that the Department of Employment Services ("DOES") will administer the District's paid leave program.

In order to develop the preliminary staffing plan, DOES reached out to each of the states that is currently administering a paid leave program and also analyzed DOES's current staffing patterns for other programs.

The working group determined that a relatively small number of employees would be needed at the beginning of this fiscal year to begin to take the steps necessary to implement the paid leave program. The cost for these first employees in Fiscal Year 2018 is estimated at over $1 million.

In addition, we expect to need to hire additional employees at various points before the end of Fiscal Year 2018 in order to continue the process of implementing the program. These additional employees will add an additional $1 million in staff costs in FY18.

This slide also provides an overview of the staffing ramp-up plan through full implementation. The plan anticipates that approximately 40-50 additional staff will need to be hired in Fiscal Year 2019 and approximately 50 additional staff will need to be hired in Fiscal Year 2020 in order to fully staff the paid leave program. At its full complement, there are expected to be approximately 115 employees dedicated to the paid leave program, at an annual cost of over

$11 million. These out-year costs would be paid for through the employer payroll tax.

Unfortunately, the Council included only $500,000 in operating funds in Fiscal Year 2018 for the paid leave program (other than capital funding for information technology) and the financial plan does not include funding for most of the Fiscal Year 2019 staffing costs. Although we do not yet have an identified solution, we are working to address the Fiscal Year 2018 and 2019 gaps in funding for program staff, but as I will discuss in future slides, the overall FY18 funding gap is much more significant.

Startup Activities

The next slide provides additional information on the types of activities that the initial paid leave staff will work on. At a high level, the initial hires will be responsible for planning and building the framework for a DOES Office of Paid Leave, which will include developing the structure and building the teams for payroll tax collection, benefit claims review and disbursement, and enforcement.

In developing the program's structure, the initial staff will put together a detailed organizational matrix, perform skills and needs assessments, draft position descriptions, develop a recruitment plan, and create staff training programs, among a host of other activities. For the tax division alone, this will include establishing the structure of the collections unit, accounting unit, and audit and compliance units. The initial staff will also develop a communications plan, including a paid leave website for employers, an outreach plan, and employer brochures and posters.

Developing the tax collection system will be another major aspect of the initial team's work plan. This will include working with the Office of the Chief Technology Officer to develop the business requirements for the tax collection system, performing vendor and systems research, developing a full statement of work, and engaging in each step of the procurement process. There is an immense amount of work that needs to take place long before the tax collection system would go live in July 2019.

Finally, the initial staff will be working on policy development, including the development of the formal program regulations. This is one of the key steps that needs to take place in order to begin the process of implementing the paid leave program. Reviews of rules and regulations in other jurisdictions will need to take place, along with individual outreach to those jurisdictions. A comprehensive rulemaking document will need to be drafted, published for public comment, and revised based on public feedback. The policy development team will also work on developing standard operating procedures for each administrative function of the paid leave program. These detailed, step-by-step procedures are critical to ensuring a fair, efficient, and consistent application of the paid leave program.

Space

Another major area that the working group analyzed was the space needed for the paid leave program staff. As I mentioned on the prior slide, there will be approximately 115 District employees needed to implement the paid leave program at full implementation in Fiscal Year 2020. To determine the best way to house those staff, the working group analyzed both owned space options and leased space options. The group reviewed the current District real estate portfolio and performed market research on potential lease options and determined that the most effective way to house the paid leave staff is through the buildout of existing District-owned space.

However, for either option, there is a substantial lead time needed to design and build out the necessary space—a process we anticipate to take at least 12 months. Given our need to have the space available by the Spring of 2019, when we expect to have approximately 60 to 70 staff on board, funds are needed during the current fiscal year to fully develop the space needs, solicit bids, and to enter into a construction contract. This creates another funding gap we are working to address.

Public Outreach

The next slide provides a high-level overview of the marketing and outreach necessary for the paid leave program. The Paid Leave Act requires public education and awareness campaigns—and we believe it's very important to have comprehensive and timely campaigns in both areas. Our timeline and scope for the education and awareness efforts are based in part on discussions the working group had with other paid leave jurisdictions.

The first step in the outreach plan is the creation of basic fact sheets that will be made widely available to the public. However, these fact sheets can be created and made available only after the Council completes whatever actions it intends to take on the five bills before the committee today. We have already received a number of inquiries about the current law, and we are eager to be able to respond definitively to questions from the public.

After the initial fact sheets, the main elements of the outreach plan are anticipated to start in the middle of 2018, with pre-implementation outreach and training. This phase is particularly important to ensure that employers are fully aware of the requirements of the paid leave program, have systems in place to begin paying the payroll taxes in July 2019, and update their internal policies and procedures to reflect the existence of the paid leave program.

Starting in Fiscal Year 2020, more aggressive outreach would begin to the public, to ensure that employees are aware that the program exists and also to ensure that they know when they can access paid leave benefits and how they can file a claim. As indicated in the chart, during Fiscal Year 2020 total outreach costs are expected to be about $500,000.

Information Technology

The working group also performed extensive research on the information technology systems necessary to implement the paid leave program. Working group members reached out to their counterparts in California, New York, New Jersey, and Rhode Island to discuss how those states had implemented, or planned to implement, the information technology for their paid leave programs. Working group members also held several meetings with the 18F technology group in the General Services Administration, and discussed potential technology solutions with other outside parties.

Based on that research, the working group determined that there are no commercially available software products to implement a paid leave program. Based on this conclusion, the Office of the Chief Technology Officer ("OCTO") is now more fully analyzing three potential options: developing a complete paid leave information technology system in-house; purchasing an off-the-shelf system and substantially modifying it in-house to meet the needs of the paid leave program; or contracting with an outside vendor to create the information technology system, either by building a completely new system or through the modification of an off-the-shelf system. The working group is also analyzing the benefits of a so-called "agile" technology procurement as part of the information technology solution.

Through the working group process, two significant information technology issues have been identified. The first is tied to funding: the Council included

$40 million in capital funds for the paid leave information technology systems, but the rough estimates for each of the potential information technology solutions is well over this amount.

The other issue identified by the working group is related to timing: until the Council determines whether it will amend the Paid Leave Act, the next major step in the procurement process—detailed requirements—cannot be completed. To better understand the challenge we are facing, I would like to describe the information technology development process in more detail.

As indicated on this slide, there are five basic phases in the information technology deployment process: planning, analysis, designing, building, and testing. Although the slide shows these phases as discrete, iterative steps, some of the elements will overlap in practice, and the results of later steps, for example testing, may require going back to an earlier step, such as designing or building.

We are currently working on the first two phases of the project, which include determining the program requirements for the information technology systems, examining existing products that are already in the marketplace, and determining how best to procure the contractual support needed to develop the systems. We expect the first two phases to take approximately six months to complete.

Once the requirements are more fully developed, based on the final form of the paid leave law, we will complete a scope of work for the procurement of outside contractors. Based on our experience with prior projects of this type, such as SLED and DCAS, the procurement process is likely to take at least ten months.

Once the contracts are finalized, the more detailed design of the systems can take place, a process that we estimate will take three months. With the design in place, the development of the information technology can then move forward in earnest. This build phase is expected to take seven months, given the complexity of each system. The final stage of the deployment process is testing, including system testing, integration testing, user acceptance testing, and performance testing. The testing process is likely to result in refining the design and revising the builds of the systems until final acceptance, a process we expect to take three to four months.

Because of the extensive amount of time necessary to complete the information technology development, any delays due to a lack of funding, uncertainty regarding the final form of the legislation, or other factors could have a negative impact on the timeline for the entire paid leave program. We will provide updates on the development of the information technology systems through quarterly reports to the Council.

Implementation Challenges

The next slide summarizes several of the issues that we face as we work to implement the Paid Leave Act. Only $500,000 was included by the Council in Fiscal Year 2018 to fund the paid leave act. This funding is inadequate for the work that we must perform in order to meet the implementation timelines established by the legislation. As described earlier in my testimony, we will need several million dollars in Fiscal Year 2018 to hire adequate staff, design and contract for the build-out of the necessary office space, and implement the first phase of outreach and education.

The funding gap continues in Fiscal Year 2019, when additional millions of dollars of capital and operating funds will again be needed for similar purposes.

In addition, the funding budgeted for information technology is likely to be too low. As you may recall, the Chief Financial Officer estimated that the information technology systems for the paid leave program would cost between $40 million and $80 million, and the current capital budget includes $40 million for this purpose. The working group's initial estimates suggest that the cost will be near or higher than the mid-range of the CFO's estimate, leading to a funding gap of potentially $20 million or more.

Moreover, the uncertainty regarding the final form of the legislation will soon begin to significantly delay our ability to move forward on a number of fronts, including the development of information technology systems and the drafting of regulations, policies, and procedures. And if the Council amends the Paid Leave Act, for example to create an employer mandate, or a hybrid model, the working group will need to review each of the issue areas again, which will extend our implementation timeline.

Finally, as the working group has conducted its work, it has identified potential concerns with the wording or structure of the current law. We are examining whether those issues can be resolved through regulations, but it is possible we will need to seek clarifying amendments to the current law.

Despite these issues, the Administration has worked aggressively to begin the process of implementing a paid leave program for District residents, and we will continue to push forward. The next critical step is for the Council to make a final decision on the structure of the paid leave program.

With that background in mind, I would now like to turn to the bills before the Committee.

<u>Proposed Amendments to the Current Law</u>

The Council has before it today five bills that would make significant amendments to the Paid Leave Act. Some of the most significant amendments that are proposed are the following:

- Bill 22-130, the Paid Leave Compensation Act of 2017, would create a hybrid system where large employers would be required to provide paid leave benefits directly to their employees, while the District would administer a paid leave program for small employers. The payroll tax on larger employers would be 0.2% and the tax on small employers would be 0.4%. This bill would exempt employers with fewer than 5 employees from any paid leave requirement.
- Bill 22-133, the Universal Paid Leave Compensation for Workers Amendment Act of 2017, would mandate that District employers provide paid leave benefits directly to their employees, replacing the District-administered program. In addition, the bill would impose a payroll tax of no more than 0.1% on many employers. With the funding from the payroll tax, the District would establish a program to provide financial assistance to small businesses that experience a substantial negative financial effect based on the requirement to implement a paid leave program. This bill would also exempt employers with fewer than 5 employees from any paid leave requirement.
- Bill 22-302, the Large Employer Paid-Leave Compensation Act of 2017, would replace the District-administered paid leave program with a mandate that employers with 25 or more employees establish and directly administer company-specific paid leave benefits that provide benefits equal to the requirements of the current law. The bill would eliminate the medical leave benefit and strike the payroll tax. Employers with fewer than 25 employees would be exempt from the

paid leave mandate and the bill would create a hardship exemption for other employers.

- Bill 22-325, the Universal Paid Leave Amendment Act of 2017, would maintain the District-administered program created by the Paid Leave Act. However, the bill would change the current funding structure for the paid leave program. Under the current law, the paid leave program is funded by a 0.62% payroll tax on employers. Under this bill, that tax would be replaced by a 0.2% tax on employers, and a 0.42% tax on employees.
- Finally, Bill 22-334, the Universal Paid Leave Pay Structure Amendment Act of 2017, would create a hybrid paid leave system where each employer would choose either to participate in a District-administered paid leave program or to administer its own paid leave program, subject to enforcement by the District. Employers who chose to participate in the District-administered program would be subject to a payroll tax of 0.54%, while employers who choose to administer their own programs would be subject to a payroll tax of 0.15%.

We believe it is important that the Council's review of these bills is guided by the following key goals:

- The paid leave program must provide robust benefits for District residents and must not increase the financial burden on District residents, through either a tax or fee.
- We must ensure that the impact on District businesses is sustainable and does not discourage companies from creating jobs in the District.

- We must maintain a paid leave structure that can be effectively and efficiently administered and enforced.

We also believe that it is important that the Council keep in mind the impact that this process is having, and will continue to have, on the Administration's ability to implement the program on the time frame set forth in the existing law. I want to emphasize, however, that the Administration will continue to work aggressively to make as much progress as possible while the Council considers these bills.

That concludes my testimony. I am happy to answer any questions you may have.